

Ex 18

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

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Estate of Michele M. Walker, Charles E. Walker,  
Administrator

VS

NO: 1:11-CV-421-PB

State of New Hampshire - Administrative Office of  
the Courts and State of New Hampshire - NH Second  
Circuit Littleton District Division -  
Administrative Office of the Courts

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DEPOSITION OF EDWIN W. KELLY

This deposition taken by agreement of counsel  
at the Office of the Attorney General, 33 Capitol  
Street, Concord, New Hampshire, on Wednesday,  
November 7, 2012, commencing at 8:52 A.M.

1 A A dozen times, very rough estimate.

2 Q And about what percentage have you found to be  
3 founded complaints?

4 A I would say 50 to 75 percent, again, rough  
5 estimate, probably on the higher end.

6 Q Do you know what the investigation process is  
7 generally that is followed by your  
8 investigators?

9 Do you know how they go about it?

10 MS. DEMPSEY: Objection as to form.

11 You can answer.

12 A Only by observing from a distance though. I  
13 don't know what -- I don't know what they do  
14 to prepare for and that sort of thing.

15 Q Would you think that all witnesses should be  
16 talked to?

17 MS. DEMPSEY: Objection as to form.

18 You can answer.

19 A That's a difficult question to answer. I  
20 think I can certainly see circumstances where  
21 there might be witnesses who are given to an  
22 investigator that the investigator may think  
23 are not relevant to the investigation itself.

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1 Q Now, if Michele Walker had any problems  
2 talking to the investigator, was she supposed  
3 to be able to come to you?  
4 MS. DEMPSEY: Paula Hurley?  
5 MS. JOHNSON: Right.  
6 A I wouldn't say so necessarily, no. The way  
7 the investigation that we use is structured,  
8 is that an investigator goes out and speaks  
9 with the person. I have never had, that I can  
10 think of, I cannot remember any time that  
11 anyone has said that they are having trouble  
12 speaking with an investigator that would have  
13 changed the investigators.  
14 Q But you do remember Michele wanted to speak to  
15 you personally?  
16 A Yes, I do.  
17 Q You told her to talk to Paula?  
18 A That is right.  
19 Q Under your harassment policy, if a mandatory  
20 reporter is told of anything with respect to  
21 sexual harassment, they are supposed to report  
22 it, whether or not the person wants it  
23 reported, right?

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1 A Yes.  
2 Q And someone that doesn't do that, doesn't  
3 report a complaint made to them, could be in  
4 trouble themselves?  
5 A Theoretically, yes.  
6 Q Well, it would be contrary to policy, right?  
7 A Yes.  
8 Q Was Michele required to participate in the  
9 investigation by Ms. Hurley by court rules?  
10 A I would have to look through the court rules.  
11 My expectation is that we expect that  
12 employees, when they are involved in any sort  
13 of a personnel issue, will respond to the  
14 inquiries made by their supervisors.  
15 Q Otherwise, it could be insubordinate, right?  
16 A Potentially.  
17 Q You would expect their participation with  
18 respect to both the Paula Hurley investigation  
19 and the Christine Howe investigation, correct?  
20 A Yes.  
21 MS. DEMPSEY: Objection as to form.  
22 You can answer.  
23 A Yes.

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1 (Whereupon, the court reporter  
2 marked Exhibit Number 4, Series of e-mails  
3 from Walker to Kelly, 8-18-09, for  
4 Identification.)  
5 A Okay.  
6 Q This is an e-mail chain between you and  
7 Michele, correct?  
8 A Yes.  
9 Q And her last e-mail to you says she is right  
10 out straight today and has a very busy court  
11 day, and she has to stay focused on the work,  
12 correct?  
13 A Yes.  
14 Q Are you aware of whether that is a court day?  
15 A No.  
16 Q Had you sent anyone else there to help on  
17 August 18?  
18 A I don't recall if we did on that day. I know  
19 that we did, but I think that might have been  
20 on the first day.  
21 Q Did you ever find out what the very important  
22 and concerning information she wanted to share  
23 only with you?

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1 A I can't say that I did. She did not share it  
2 with Paula. I did receive a letter that you  
3 referred to earlier in November sometime. I  
4 don't know if that was the information.  
5 Q Let me show you the November letter. Let's  
6 mark that, easier than going back and forth  
7 between exhibits.  
8 (Whereupon, the court reporter  
9 marked Exhibit Number 5, Letter to Hurley from  
10 Walker, 11-9-09, for Identification.)  
11 Q You are familiar with the November 9th, 2009  
12 letter?  
13 A Yes, I am.  
14 Q I guess this was sent to Paula as the  
15 investigator, and she shared it with you?  
16 A I think that is right.  
17 Q So what steps did you take when you received  
18 this letter?  
19 A I believe this letter was considered a  
20 complaint under the anti-discrimination  
21 policy, and it was forwarded to Jeff Smith,  
22 pertaining to the anti-discrimination policy.  
23 Q Do you know what steps he took then?

13 (Pages 46 to 49)

EDWIN W. KELLY

November 7, 2012

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1 is the 24-page document that you have seen  
 2 before that you referenced earlier?  
 3 A The 24-page document that I referenced before  
 4 begins a few pages in, and it is marked the  
 5 beginning of 104 and ending at 128.  
 6 Q The first pages, have you seen those before?  
 7 A I am not sure if I have. As I am reading it,  
 8 it looks as though it may be from the  
 9 transcript of her interview with Christine  
 10 Howe. If it is, then I have seen it, or some  
 11 parts of it.  
 12 Q Okay. But it would be referenced in your  
 13 report if you saw this?  
 14 A Yes, and --  
 15 MS. DEMPSEY: Objection as to form.  
 16 If you saw it. The question is, if you saw  
 17 it, it would be referenced in your report?  
 18 A Yes, and anything that the investigator was  
 19 given that they discussed during their  
 20 interview, I would have had as well, and would  
 21 have reviewed that as part of the  
 22 decision-making process.  
 23 Q And could you have listed those documents?

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1 A I believe I did. I believe I was fairly  
 2 complete, although there may have been a  
 3 generalized statement about reviewing the  
 4 transcripts and any exhibits presented at the  
 5 time or something like that.  
 6 Q Okay. Let me show you what has been marked as  
 7 Kozlowski 14, and it is a stalking petition by  
 8 Tracy Ash and ask you if you have seen that  
 9 before?  
 10 A I have.  
 11 Q Do you remember when you saw that first?  
 12 A I don't recall when I saw it first.  
 13 Q Sometime during the investigation?  
 14 A I believe so. I may have also seen it when  
 15 the case was transferred, I believe, from  
 16 Littleton to Plymouth, and I may have seen it  
 17 in conjunction with the transfer of the case.  
 18 Q And why would you have seen it at that point?  
 19 A If a case is transferred from one court to  
 20 another, I will generally be involved in the  
 21 decision to transfer.  
 22 Q Because it would -- what are the reasons cases  
 23 get transferred? Is there a whole bunch of

1 them?  
 2 A There are, but most of them from my  
 3 perspective have to do with any possible  
 4 appearance of impropriety that anyone looking  
 5 at the process from the outside would  
 6 perceive. Either that because the person  
 7 works in the court, the judge is more likely  
 8 to find in their favor, or the process would  
 9 appear to be unfair if the person is in the  
 10 same place or the litigants are in the same  
 11 place where the records are kept.  
 12 Q Do you recall reviewing that at the time it  
 13 transferred?  
 14 A I don't.  
 15 Q Is it something you would have looked at to  
 16 see what the nature of it was?  
 17 A Not necessarily. Sometimes it would be as  
 18 simple as a phone call saying that a civil  
 19 stalking petition has been filed against one  
 20 of the employees, and it is scheduled for  
 21 trial, should we move it? And I would say,  
 22 yes or no without seeing that petition.  
 23 Q Wouldn't it be -- isn't it an unusual

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1 circumstance to have a stalking petition filed  
 2 against one of the court clerks?  
 3 A Given that we have 350 employees, it is  
 4 unusual. It is rare, but it does happen.  
 5 Q When Michele originally complained in August,  
 6 you didn't instruct Ms. Hurley about reviewing  
 7 the stalking petition or the court files in  
 8 any way?  
 9 A I did not.  
 10 Q Do you think knowing that there was a finding  
 11 about Lisa Towle actually stalking someone on  
 12 one occasion would be something that Paula  
 13 should look at?  
 14 MS. DEMPSEY: Objection as to form.  
 15 You can answer.  
 16 A Not necessarily.  
 17 Q If it was part of the complaint by Michele,  
 18 was it something that Paula should have looked  
 19 at?  
 20 A If Michele was alleging that she was  
 21 specifically fearful because of that  
 22 complaint?  
 23 Q In part?

23 (Pages 86 to 89)

1 different court, correct?

2 MS. DEMPSEY: Objection as to form.

3 You can answer.

4 A I think that is right, yes.

5 Q And then he left voluntarily and found another  
6 job, right?

7 A Yes, I don't know what happened beyond that.

8 Q You don't have any information that he was  
9 terminated?

10 A Oh, no, I don't believe he was terminated.

11 Q Did Michele Walker ever complain to you about  
12 Chuck, about the plan to reassign Chuck?

13 A I don't remember any complaint that Michele  
14 made.

15 Q I will show you this e-mail that was marked as  
16 4 Knapp?

17 A Okay.

18 Q Do you recall receiving this e-mail?

19 A I do.

20 Q Do you remember when?

21 A I think it was part of what I reviewed in my  
22 decision.

23 Q Do you know what Clark's last name is?